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6 INCORPORATED, AEROFLEX COLORADO
7 SPRINGS, INC., AMI SEMICONDUCTOR,
8 INC., MATROX ELECTRONIC SYSTEMS,
LTD., MATROX GRAPHICS INC., MATROX
INTERNATIONAL CORP., and MATROX
TECH, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RICOH COMPANY, LTD.,

Plaintiff,

VS.

AEROFLEX INCORPORATED, AMI SEMICONDUCTOR, INC., MATROX ELECTRONIC SYSTEMS LTD., MATROX GRAPHICS INC., MATROX INTERNATIONAL CORP., MATROX TECH, INC., AND AEROFLEX COLORADO SPRINGS, INC.,

Defendants.

Case No. C03-4669 MJJ (EMC)

**DECLARATION OF DENISE M. DE MORY
IN SUPPORT OF DEFENDANTS' MOTION
FOR ORDER EXTENDING TIME TO
PERMIT LATE FILING OF AMENDED
ANSWERS PURSUANT TO F.R.C.P. 6(B)
AND CIVIL L.R. 6-3**

Judge: Hon. Martin J. Jenkins

1 I, Denise M. De Mory, declare as follows:

2 1. I am a partner at the law firm of Howrey LLP, counsel for Aeroflex Incorporated,
 3 Aeroflex Colorado Springs, AMI Semiconductor, Inc., Matrox Electronic Systems, Ltd., Matrox
 4 Graphics Inc., Matrox International Corp., and Matrox Tech, Inc. (collectively, the "Customer
 5 Defendants") in this action. The following declaration is based on my personal knowledge. If called
 6 upon to testify, I could and would competently testify to the matters set forth below.

7 2. The December 12 Order granting leave to amend was issued during the first round of
 8 30(b)(6) depositions of Synopsys witnesses. Depositions occurred on December 12 (Pieper),
 9 December 13 (Olsen), December 16 (Tran in Oregon), December 21 (Adams), and December 22
 10 (Zepter), and December 14 and 15 were deposition preparation days. The primary Howrey attorneys
 11 responsible for this matter, Jaclyn Fink and I, were attending to the preparation for and defense of the
 12 depositions of Synopsys witnesses during this period right before the holidays began. Although the
 13 order granting leave to amend issued on December 12, 2005, an internal case calendar circulated two
 14 days thereafter inadvertently did not include the answer deadline. This omission contributed to the
 15 failure to file.

16 3. I oversaw the motion for leave to amend. I recall a meeting shortly after the order
 17 issued in which I requested that the answers be edited in accordance with the Court's Order and filed.
 18 The filing, however, obviously did not occur, and I did not notice the failure to file for some time,
 19 likely because of the intervening holidays.

20 4. Although the answers did not get filed, I proceeded under the assumption that they had
 21 been filed. I instructed the Customer Defendants to collect and produce documents in accordance with
 22 the Court's Order granting leave to amend to add the 28 U.S.C. § 1498 defense. It took several months
 23 to collect the documents, but they were ultimately produced on or about March 2, 2006 based on the
 24 belief that the answers were operative. The documents are labeled AF 283572 – AF 284289. The
 25 failure to file was not discovered until it was raised in Ricoh's portion of a joint letter filed with Judge
 26 Chen on or about March 28. I was on vacation at that time, but promptly attended to this issue after I
 27 returned, saw Ricoh's contentions, and investigated the facts.

28

5. Attached hereto as Exhibit 1 is an e-mail string with Ken Brothers and Gary Hoffman regarding the amended answers filed on April 7, 2006.

6. Attached hereto as Exhibit 2 is a true and correct copy of AF 283572-575.

7. Counsel regrets this inadvertent error, but requests leave to correct the failure to file in accordance with the Court's December 12, 2005 Order.

8. Because any additional needed discovery is already scheduled to go forward, this extension of time will have no effect on the schedule for this case.

8 9. As evidenced by Exhibit 1, counsel for Ricoh is not agreeable to the requested
9 extension of time, and intends to move to strike the answers. Ricoh has cited alleged prejudice to
10 Ricoh as well as an alleged statement in a filing that the Customer Defendants decided not to file the
11 amended answers as reasons why they are not agreeable to the filing. As set forth in the accompanying
12 motion, the Customer Defendants do not believe there is any prejudice to Ricoh. In addition, I am not
13 aware of any filing in which the Customer Defendants indicated that they decided not to file the
14 amended answers. Instead, the only statement that I could locate on which Ricoh might potentially
15 rely is a statement that explains why Ricoh's contentions about why the Customer Defendants sought
16 certain amendments in the October motion for leave to amend were incorrect. Given Ricoh's
17 statements regarding the late filing in its March 28k, 2006 portion of the Joint Letter to Judge Chen
18 regarding the untimeliness of the answers and its statements in Exhibit 1 hereto, I do not believe any
19 additional meet and confer can resolve this dispute.

Executed this 12th day of April, 2006, at San Francisco, California.

/s/Denise M. De Mory
Denise M. De Mory

DeMory, Denise

From: Hoffman, Gary [HoffmanG@dsmo.com]
Sent: Monday, April 10, 2006 7:16 PM
To: DeMory, Denise
Cc: Fink, Jacky; Corbin, Terry; _Brothers, Kenneth; _Oliver, Eric; _Allen, DeAnna; _Weinstein, Michael; _Meilman, Edward; _Seyoum, Solomon
Subject: Re: Amended Answers and Counterclaims

We will consider it but currently are not inclined to follow you suggestion

Gary

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: DeMory, Denise
To: Hoffman, Gary
CC: Fink, Jacky; Corbin, Terry; Brothers, Kenneth; Oliver, Eric; Allen, DeAnna; Weinstein, Michael; Meilman, Edward; Seyoum, Solomon
Sent: Mon Apr 10 21:32:10 2006
Subject: RE: Amended Answers and Counterclaims

Dear Gary:

I write in response to your e-mail below. I am unable to find any reference in any letter to the Court that our clients decided not to file amended answers, and do not believe any such statement was made.

Your response does not address the procedure I suggested in my e-mail, which is that you move to strike via a letter response to my letter filed with the Court on April 7, 2006, we briefly respond, and then submit the matter for the Court's determination. In view of your continued expressed intention to move to strike this still seems to me to be the most expeditious manner in which to proceed, and eliminates Ken's expressed concern about unnecessary additional expenditures. Please advise if you will agree to this procedure.

Regards,

Denise

From: Hoffman, Gary [mailto:HoffmanG@dsmo.com]
Sent: Friday, April 07, 2006 6:06 PM
To: DeMory, Denise
Cc: Fink, Jacky; Corbin, Terry; _Brothers, Kenneth; _Oliver, Eric; _Allen, DeAnna; _Weinstein, Michael; _Meilman, Edward; _Seyoum, Solomon
Subject: RE: Amended Answers and Counterclaims

Denise,

I am responding to your email, which I just saw. As Ken Brothers indicated your filing of the Amended Answer is untimely. In fact, in your recent letter to the Court you stated that you clients had decided not to file the Amended Answer. Since no Amended Answers were filed, we have proceeded for months on the basis that you decided not pursue the issues and hence we have not taken discovery on those matters. For you to now raise such issues at this late date is both inconsistent with the clear order from the Court and prejudicial to Ricoh.

Consequently, we repeat our demand that you immediately withdraw these untimely filed Amended Answers or we will proceed with filing a motion to strike them. Please let us have your response by Monday, April 10, 2006.

Gary Hoffman

From: DeMory, Denise [mailto:demoryd@Howrey.com]
Sent: Fri 4/7/2006 8:27 PM
To: Brothers, Kenneth
Cc: Fink, Jacky; Hoffman, Gary
Subject: RE: Amended Answers and Counterclaims

Ken:

In view of the letter that I filed with the amended answers, I do not believe a motion to strike is necessary or would be an efficient way to resolve this dispute. As you know, we have proceeded as if the answers were operative and have produced the contracts that prove up the 28 U.S.C. § 1498 defense. The failure to file was truly inadvertent. I did not realize, likely given that the date for the filing fell over the holidays, that they were not filed until you raised the issue in your letter last week, which I did not fully review on my vacation last week. In addition, as set forth in my letter to the Court, to the extent any discovery is necessary, which I am not sure it is in view of the contracts (for your convenience, the documents are AF 283572-284249, which I am told were served on or about March 2, 2006), that you will have ample opportunity to conduct the discovery by asking Aeroflex questions at the depositions on April 20 and 21, or by serving third party discovery, to the extent you deem it necessary.

Assuming that you will continue to press this issue, I propose that you respond to my letter, and request whatever relief you deem appropriate, including that the answers be stricken. We will file a brief letter response, and then, the Court can decide the issue in an expeditious and efficient manner. I also realize that you are leaving on vacation, and I thought, but may be wrong, that Gary is in Japan. In view of this, we also agree that we will not object to or rely on your failure to respond until after April 17 as a waiver of your right to challenge the filings as you deem fit.

Regards,

Denise

From: Brothers, Kenneth [mailto:BrothersK@dsmo.com]
Sent: Friday, April 07, 2006 4:08 PM
To: DeMory, Denise
Cc: HowreyRicoh432
Subject: Amended Answers and Counterclaims

Denise:

I saw that you have just filed at least two Amended Answers and Counterclaims. These filings are obviously untimely. Judge Jenkins' order of December 12, 2005 ordered that any conforming amendment within 10 days of the date of filing of that order, or to be filed by December 27, 2005. Ricoh demands the immediate withdrawal of these filings. If Ricoh is required to file a motion to strike, you are on notice that we will seek fees under 28 USC 1927.

Regards, Ken

Ken Brothers
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington DC 20037

phone (202) 429-2184
fax (202) 887-0689

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Contract Clauses

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- :: Events

Contract Clauses

General Clauses

The following general clauses are incorporated in the basic ATSP2 contract and apply to all Delivery Orders issued under ATSP2.

Accounting and Appropriation. Accounting and appropriation data (as applicable) for each task will be cited on individual delivery orders issued under the ATSP2 basic contract.

ACO Delegation. The ACO is authorized to and responsible for deobligation of any excess funds associated with performance of the ATSP2 basic contract and all Delivery Orders issued under ATSP2.

Individual Subcontract Plan. Per FAR 52.219-9, an individual contract plan covering the entire contract period is required. This plan specifies goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns, and women-owned small business concerns as subcontractors. The subcontracting plan contained in the Contractor's DoD Comprehensive Subcontracting Plan dated 1 Sep 98 is incorporated into the ATSP2 basic contract. The small business goal is 32.0%, the small disadvantaged business goal is 10.0%, and the women owned small business goal is 5.0%.

FAR and DFARS Clauses (Pre-negotiated)

The following pre-negotiated FAR and DFARS clauses are incorporated by reference in the basic ATSP2 contract and apply to all Delivery Orders issued under ATSP2. These clauses are the same for all of the ATSP2 Prime Contractors and are not renegotiable. Applicable fill-ins are to be cited on individual Delivery Orders.

Federal Acquisition Regulations:

52.202-	Definitions	OCT
1		1995
52.203-	Gratuities	APR
3		1984
52.203-	Covenant Against Contingent Fees	APR
5		1984
52.203-	Restrictions on Subcontractor Sales to the Government	JUL
6		1995
52.203-	Anti-Kickback Procedures	JUL
7		1995
52.203-	Cancellation, Rescission, and Recovery of Funds for Illegal Or Improper Activity	JAN
8		1997
52.203-	Price or Fee Adjustment for Illegal or Improper Activity	JAN
10		1997
52.203-	Limitation on Payments to Influence Certain Federal Transactions	JUN
12		1997
52.204-	Security Requirements	AUG
2		1996
52.204-	Printing/Copying Double-Sided on Recycled Paper	JUN
4		1996
52.209-	First Article Approval—Contractor Testing	SEP

3		1989
52.209-	Alt I First Article Approval—Contractor Testing (Sep 1989) –	JAN
3	Alternate I	1997
52.209-	Alt II First Article Approval—Contract Testing (Sep 1989) –	SEP
3	Alternate I	1989
52.209-	First Article Approval—Government Testing	SEP
4		1989
52.209-	Alt I First Article Approval—Government Testing (Sep 1989) –	JAN
4	Alternate I	1997
52.209-	Alt II First Article Approval—Government Testing (Sep 1989) –	SEP
4	Alternate II	1989
52.209-	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	JUL
6		1995
	52.211.5 Material Requirement	OCT
		1997
52.211-	Notice of Priority Rating for National Defense Use	SEP
14		1990
52.211-	Defense Priority and Allocation Requirements	SEP
15		1990
52.215-	Audit and Records—Negotiation	AUG
2		1996
52.215-	Order of Precedence—Uniform Contract Format	OCT
8		1997
52.215-	Price Reduction for Defective Cost or Pricing Data – Modifications	OCT
11		1997
52.215-	Subcontractor Cost or Pricing Data—Modifications	OCT
13		1997
52.215-	Integrity of Unit Prices	OCT
14		1997
52.215-	Termination of Defined Benefit Pension Plans	DEC
15		1998
52.215-	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	OCT
18		1997
52.216-	Allowable Cost and Payment	APR
7		1998
52.216-	Fixed Fee	MAR
8		1997
52.216-	Ordering	OCT
18		1995
52.216-	Order Limitations	OCT
19		1995
52.216-	Indefinite Quantity	OCT
22		1995
52.217-	Cancellation Under Multiyear Contracts	OCT
2		1997
52.217-	Option for Increased Quantity	MAR
6		1989
52.217-	Option for Increased Quantity-Separately Priced Line Item	MAR
7		1989
52.217-	Option to Extend Services	AUG
8		1989
52.217-	Option to Extend the Term of the Contract	MAR
9		1989
52.219-	Utilization of Small Business Concerns	JAN
8		1999
52.219-	Small Business Subcontracting Plan	JAN
9		1999
52.219-	Alt II Small Business Subcontracting Plan (Jan 1999) Alternate II	JAN
9		1999
52.219-	Liquidated Damages-Subcontracting Plan	JAN
16		1999
52.222-	Notice to the Government of Labor Disputes	FEB
1		1997
52.222-	Payment for Overtime Premiums	JUL
2		1990
52.222-	Convict Labor	AUG
3		1996
52.222-	Davis Bacon Act	FEB
6		1995
	52.222-	FEB

7	Withholding of Funds	1988
52.222-	Payrolls and Basic Records	FEB
8		1988
52.222-	Apprentices and Trainees	FEB
9		1988
52.222-	Compliance with Copeland Act Requirements	FEB
10		1988
52.222-	Subcontracts (Labor Standards)	FEB
11		1988
52.222-	Contract Termination-Debarment	FEB
12		1988
52.222-	Compliance with Davis-Bacon and Related Act Regulations	FEB
13		1988
52.222-	Disputes Concerning Labor Standards	FEB
14		1988
52.222-	Certification of Eligibility	FEB
15		1988
52.222-	Approval of Wage Rates	FEB
16		1988
52.222-	Labor Standards for Construction Work—Facilities Contracts	FEB
17		1988
52.222-	Walsh-Healy Public Contracts Act	DEC
20		1996
52.222-	Prohibition of Segregated Facilities	FEB
21		1999
52.222-	Equal Opportunity	FEB
26		1999
52.222-	Notification of Visa Denial	FEB
29		1999
52.222-	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	APR
35		1998
52.222-	Affirmative Action for Workers with Disabilities	JUN
36		1998
52.222-	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era	JAN
37		1999
52.222-	Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option)	MAY
43		1989
52.223-	Clean Air and Water	APR
2		1984
52.223-	Hazardous Material Identification and Material Safety Data	JAN
3		1997
52.223-	Pollution Prevention and Right-to-Know Information	APR
5		1998
52.223-	Drug Free Workplace	JAN
6		1997
52.223-	Toxic Chemical Release Reporting	OCT
14		1996
52.225-	Duty-Free Entry	APR
10		1984
52.225-	Restrictions on Certain Foreign Purchases	AUG
11		1998
52.225-	Inconsistency Between English Version and Translation of Contract	MAY
14		1995
52.226-	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	MAY
1		1999
52.227-	Authorization and Consent	JUL
1		1995
52.227-	Alt I Authorization and Consent (Jul 1995) - Alternate I	APR
1		1984
52.227-	Notice and Assistance Regarding Patent and Copyright Infringement	AUG
2		1996
52.227-	Filing of Patent Applications—Classified Subject Matter	APR
10		1984
52.227-	Patent Rights—Retention by the Contractor (Long Form)	JAN
12		1997
52.227-	Rights in Data—General	JUN
14		1987
52.227-	Statement of Limited Rights Data and Restricted Computer Software	MAY
15		1999
52.227-	Additional Data Requirements	JUN
16		1987

52.228-	Insurance—Work on a Government Installation	JAN
5		1997
52.228-	Insurance—Liability to Third Persons	MAR
7		1996
52.229-	Federal, State and Local Taxes	JAN
3		1991
52.229-	Taxes—Contracts Performed in U S Possessions or Puerto Rico	APR
5		1984
52.229-	Taxes—Fixed Price Contracts with Foreign Governments	JAN
7		1991
52.229-	Taxes—Foreign Cost-Reimbursement Contracts	MAR
8		1990
52.229-	Taxes—Cost-Reimbursement Contracts with Foreign Government	MAY
9		1990
52.232-	Payments	APR
1		1984
52.232-	Payments Under Time-And-Materials and Labor Hour Contracts	FEB
7		1997
52.232-	Discounts for Prompt Payment	MAY
8		1997
52.232-	Extras	APR
11		1984
52.232-	Progress Payments	JUL
16		1991
52.232-	Interest	JUN
17		1996
52.232-	Availability of Funds for the Next Fiscal Year	APR
19		1984
52.232-	Limitation of Cost	APR
20		1984
52.232-	Limitation of Funds	APR
22		1984
52.232-	Assignment of Claims	JAN
23		1986
52.232-	Alt I Assignment of Claims (Jan 1986) - Alternate I	APR
23		1984
52.232-	Prompt Payment	JUN
25		1997
52.232-	Performance-Based Payments	MAY
32		1997
52.232-	Payment by Electronic Funds Transfer—Central Contractor	
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